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July 30, 1997

Ms. Anne K. Bingaman
Assistant Attorney General
Antitrust Division
United States Department of Justice
10th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Midwest Behavioral Healthcare LLC

Dear Ms. Bingaman:

We represent Midwest Behavioral Healthcare LLC ("MBH"), a North Dakota limited liability company. MBH is a multiprovider network consisting primarily of complementary and unrelated behavioral health care providers. On behalf of MBH, we respectfully request the Department of Justice ("Department") to issue a business review letter pursuant to its business review procedures, 28 F.R. § 50.6, stating its current enforcement intentions with respect to the proposed operations of MBH. Expedited review is requested pursuant to 58 C.F.R. 6132 (1993).

MBH has undertaken a good faith search for the documents and information required by the Department as a part of this request pursuant to C.F.R. § 50.6. The remainder of this letter contains that information along with required documents which are provided as attachments to this letter.

1. Legal name, principal place of business, legal form, and ownership structure.

MBH was organized as a North Dakota limited liability company and is managed by its Board of Governors. MBH's formation came about due to consumer demand for improved access to and quality of behavioral health care services and market forces that encourage the formation of networks that offer one-stop shopping.

Legal Name:	Midwest Behavioral Healthcare
Principal Place of Business:	100 4th Street South, Suite 608 Fargo, North Dakota 58103
Legal Form:	Limited Liability Corporation
Organizational Structure:	MBH's Articles of Organization, Operating Agreement and Member Control Agreement are attached to this letter at <u>Tab A</u> , <u>Tab B</u> and <u>Tab C</u> , respectively.
MBH is owned equally by:	Stephen R. Setterberg, M.D., Emmet M. Kenney Jr., M.D., Jackson W. Lind, M.D., and Michael A. Volk, M.A.

MBH is intended to be a multispecialty behavioral health care provider network. It is in the process of negotiating participating provider agreements ("Participating Provider Agreements") with a wide variety of behavioral health care providers in the Fargo, North Dakota and Moorhead, Minnesota areas, referred to in the remainder of this letter as the "Fargo-Moorhead Area." Pending receipt of a favorable review letter, MBH plans to expand the network to include the Grand Forks and East Grand Forks, North Dakota communities in addition to the Fargo-Moorhead Area, thereby serving the area referred to in the remainder of this letter as the "Red River Valley Area." Maps of this area are located at Tabs G, H and I.

MBH plans to offer to third-party payors the opportunity to purchase a full continuum of behavioral health care services for children, adolescents and adults living in the Red River Valley Area. The goals of the network are to improve the quality of care available to consumers, to assure access to appropriate levels of care, and to improve the cost effectiveness of the care provided. MBH will also offer certain management services to its network providers in an effort to provide them with an opportunity to reduce their administrative costs.

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The information contained in this request reflects the proposed structure and operation of MBH. Attached to this letter at Tab D is a draft of a mission statement of MBH and a business plan that were developed for MBH at a time when the network planned to focus primarily on the behavioral health care needs of children and adolescents. The MBH mission statement and business plan reflect the network's goal of developing a high degree of cooperation and integration among its network providers, as reflected by the substantial clinical and financial integration found in the network, so that a continuum of high quality behavioral health care services may be offered in a cost effective manner.

2. Persons or firms expected to participate in the venture and the nature of their contribution.

In order to meet its goal of providing quality medical care to patients at the most cost effective rates, MBH will invite only behavioral health care providers who meet credentialing standards established by the Board of Governors of MBH to join the network. These standards are summarized at Tab E. In addition, in order to develop a full continuum of behavioral health care services, only providers who specialize in certain areas of behavioral health will be asked to join the network.

Providers who are selected and agree to join the network will be asked to enter into an agreement ("Participating Provider Agreement") with MBH. Attached to this letter at Tab F is the proposed Participating Provider Agreement. The relationship between the network providers and MBH is nonexclusive as described below. The goal in selecting network providers is to limit the number and type of network providers in order to achieve the network's goals of quality and cost-containment. Providers will not be accepted into the network unless they are fully committed to the access, quality, and cost effectiveness goals of MBH.

The specific providers in the Fargo-Moorhead Area with whom MBH is currently in discussions or has entered into Participating Provider Agreements are listed below. MBH will only add providers outside the Fargo-Moorhead Area upon receipt of a favorable review letter. If negotiations with the providers listed below are not successful, MBH will approach other providers (who meet MBH's credentialing standards) in the same specialty areas until a full continuum of behavioral health care services is available through the network in the Fargo-Moorhead Area. This continuum of services will include psychiatrists, psychologists, inpatient and outpatient treatment, chemical dependency treatment, and foster and respite care. Because network participants are selected for their ability to meet complementary behavioral health care service needs, their joint marketing and other cooperative arrangements are unlikely to have an anticompetitive effect. See B.R.L. 96-185 (application of Statement 9 relating to a multiprovider network of hospice providers finding where members are not competitors

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anticompetitive effect is unlikely) and B.R.L. 93-012 (where specialists are not in meaningful competition with each other, entry into a nonexclusive contract is unlikely to create, enhance, or facilitate the exercise of market power).

Current and/or proposed MBH providers in the Fargo-Moorhead Area:

- (1) **Psychiatric Medicine Associates ("PMA"):** PMA is a psychiatric partnership specializing in child and adolescent psychiatry that has been in existence since January 1, 1996 and is located in Fargo. It is an outgrowth of a practice that existed for over nineteen years prior to the formation of PMA. The professional staff consists of 4 psychiatrists (two of whom are board certified in child and adolescent psychiatry), 5 doctorate level psychologists, 1 masters level psychologist, 1 certified nurse specialists, and 4 licensed social workers. Three of the psychiatrist/owners of PMA are also owners of MBH and Children's Psychiatric Hospital LLC. Historically, PMA's patients have come from the geographic area indicated on the map found at Tab G.
- (2) **Pathways:** Pathways provides chemical dependency treatment services to both adults and children in inpatient, outpatient, and community settings. Pathways is located in Fargo and has been in existence for fifteen years. The services offered include individual and group therapy. The professional staff of Pathways consists of 5 licensed addiction counselors. Historically, Pathways' patients have come from the geographic area indicated on the map found at Tab H.
- (3) **PATH:** PATH provides foster care and respite services, including in-home family services for children, teens, adults and their families who are dealing with addiction or other problems and has been in existence for over thirty years. The staff of PATH consists of over 35 licensed social workers and more than 100 licensed foster parents. PATH provides services in Wisconsin, Minnesota, and North Dakota.
- (4) **Children's Psychiatric Hospital LLC ("CPH"):** CPH became licensed to provide inpatient and outpatient psychiatric services for children and adolescents, including a partial hospitalization program, on April 30, 1997. CPH holds a 24 bed license and is located in Fargo. The professional staff consists of 3 family therapists, 1 licensed social worker, 10 nurses, 20 behavioral health technicians, and one medical director/psychiatrist. The current medical director is a member of PMA. Three of the owners of CPH have an ownership interest in both MBH and PMA. Since its

formation, CPH has served patients from the geographic area indicated on the map found at Tab I.

In addition, MBH hopes to add a provider of residential mental health treatment services and a provider of adult inpatient psychiatric services to its network in the near future.

3. Purposes and objectives of the venture, together with any limitations on the nature or scope of its activities or operations.

a. Purposes and Objectives

As noted in the attached Mission Statement, the purposes of MBH are threefold:

- (1) To create a new behavioral health care product for the Red River Valley Area that will provide a full continuum of high quality behavioral health care services at cost-effective prices.
- (2) To reduce costs for MBH network providers through centralized administrative and management services.
- (3) To ensure all necessary behavioral health care services are available to children, adolescents, and adults living in the Red River Valley Area.

To achieve its goals in the areas of quality, access, and cost effectiveness, MBH has the following objectives:

- (1) Continuum of Services. MBH will bring together a group of providers to provide the entire range of behavioral health care services for children, adolescents, and adults in the Fargo-Moorhead Area and eventually the Red River Valley Area. As gaps in the continuum are identified by MBH, consumers, or payors, new providers will be added or existing services will be expanded to meet the unmet needs of consumers. By offering a seamless continuum of services, MBH will be able to provide consumers with access to the appropriate level of care throughout their treatment cycle.
- (2) Coordination of Care. Each network provider will communicate to MBH the requirements for access to the specific behavioral health services they provide or care settings they offer. Based upon this information, MBH will develop and implement network guidelines related to intake, assessment, and transfer procedures. At the time a patient initiates services at CPH and on an ongoing basis thereafter, a masters level

professional will serve as care manager to assure that appropriate types and levels of care are offered to consumers. In addition, a multidisciplinary approach is utilized by CPH to assure appropriate levels and types of care are provided to patients. This effort to coordinate service delivery will be designed to assure that patients receive immediate access to the appropriate level of service. This will enable CPH, and ultimately MBH, to improve the quality of care provided to patients by participating providers while controlling the cost of that care.

- (3) Outcomes Measurement. Outcomes selected by MBH for measurement will include a full range of clinical and other services provided by MBH and its network providers. Outcomes measurement will include monitoring patient satisfaction and providing feedback from patients to network providers.
- (4) Information Systems and Data Analysis. A customized management information system is being developed to meet the needs of the multiprovider network. Collection and analysis of patient and certain financial data will be critical to the operation of the network. MBH will require extensive data reporting from all network providers. Individual and aggregate data on cost of care, quantity of care, and the nature of services provided by network providers will be gathered and analyzed for a variety of purposes including, quality assurance, utilization review, and cost-effectiveness of care. MBH will provide detailed reports to network providers on both individual and aggregate performance measures in an effort to improve the quality of care each provider, and the network, provides and to increase cost effectiveness of the care provided. This information will enable MBH to locate inefficiencies in the provision of care and to take corrective action as needed, up to and including terminating network providers participation in the network.
- (5) Quality Assurance and Utilization Review. MBH is developing appropriate practice standards and protocols to govern behavioral health care services and will actively review network providers on an ongoing basis in light of these standards. Network providers will be asked to modify their actual practice where necessary based upon regular evaluations of quality. Network providers who are unable to meet the network standards will be removed from the network. Based upon data gather by MBH, individual network provider performance and the network's aggregate performance will be evaluated with respect to quality and utilization and changes will be made as needed to improve quality and reduce costs. MBH also will seek accreditation from the Joint

Commission on Accreditation of Health Care Organizations as a part of its quality assurance activities.

b. Limitations on Activities

The nature and scope of services offered through MBH is limited to behavioral health care services for children, adolescents and adults in the Fargo-Moorhead Area. Pending receipt of a favorable review letter, MBH plans to expand the network's availability to the Red River Valley Area. At the present time, MBH does not intend to become involved in the delivery of non-behavioral, acute health care services.

4. The products or services the venture will develop, produce, market or distribute.

There are two products or services being developed by MBH. First, MBH, through its network providers, will provide a package of care that includes the full continuum of behavioral health care services. Payors will have the option of purchasing services under either a per diem fee or a fee-for-service basis. Second, MBH will offer extensive management and administrative services to its network providers. Network providers will pay MBH a fixed fee for the management and administrative services it provides.

a. Continuum of Services Available to Consumers and Payors

The package of professional services and service settings available through MBH will be extensive. The package will include a specialty children's psychiatric hospital, psychologists, psychiatrists, licensed social workers, licensed addiction counselors, family therapists, case managers, intake workers, in-home and foster care providers, and nurses all focused on the behavioral health care needs of children, adolescents and adults. The service settings accessible through MBH will include inpatient and outpatient hospital settings and clinical settings, as well as community-based settings and in-home settings. MBH desires to add residential treatment services such as residential mental health services to the service mix as well as a specialty adult psychiatric hospital. This broad continuum of services and service settings will permit consumers with a wide variety of needs to receive the services that are appropriate in nature and scope for their particular diagnosis throughout the care cycle.

Two pricing options are intended to be made available to payors who wish to purchase services through MBH. One involves a per diem fee arrangement that is currently not available from any other provider or network in the area and the other involves a fee-for-service arrangement. MBH hopes to add a capitated fee arrangement

option within the next two to three years. At this time North Dakota payors are unwilling to consider such arrangements.

Per Diem Fee Option. Under the per diem fee option, a payor will pay a fixed amount per member per day for access to a package of hospital based services. Network providers whose services are covered by a per diem fee agreement will be paid a predetermined amount as negotiated by MBH. Professional services that are not included under the per diem rate are billed on a fee-for-service basis as described below. Consumers receive access to a broader range of services at less cost through this type of arrangement. As the network becomes operational and data is available for analysis, MBH will evaluate and implement a payment methodology that more effectively allocates the per diem fee to providers and that provides greater financial incentives to assure the provision of high quality services in a cost effective manner. Payors were initially unfamiliar with this type of arrangement because it was not previously available from any other parties or networks but have begun to support MBH in expanding the per diem options offered through the network. MBH plans to expand the use of this type of arrangement and eventually move from this type of payment methodology to a capitation arrangement covering all MBH services within the next two to three years.

Fee-for-Service Option. Under fee-for-service arrangements, network providers will be paid by payors according to fee schedules that are agreed to by each individual provider covered by a particular payor contract. To facilitate the establishment of fee-for-service arrangements, an MBH employee/agent, who is not himself a health care provider, will gather information from each network provider regarding the minimum payment that participant will accept from a payor. Although there is very little overlap among the services provided by the various network providers, this list of acceptable fees will be kept confidential and will not be shared with either MBH's owners who are network providers or with any other network providers. This information will be used to develop a fee schedule that is presented to payors showing the percentages of participants in the network that have authorized contracts at various price levels.

The MBH employee/agent will be authorized to contract on behalf of a provider where a payor offers a fee at or above the minimum fee level identified as acceptable by the individual provider but will not negotiate on behalf of participants. Any and all contract offers from payors that do not meet a network provider's previously identified acceptable level will be communicated to the individual network provider using a messenger model. The network provider will be free to accept or reject the contract offer without any pressure from MBH or other network providers. The MBH employee/agent may provide objective information about proposed contract terms offered by other payors but will not express an opinion as to the action the network provider should take in response to an offer. The network provider's decision will be communicated to the payor, as well as at the request of the payor, the view of the network provider with respect

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to the proposed contract. The MBH employee/agent will not share a given network provider's views or intentions with regard to a fee-for-service proposal with other network providers. Under the fee-for-service pricing approach, payors are free to purchase the service of some or all of the network providers and may choose to negotiate individually with providers rather than through the network. A similar approach was described in B.R.L. 94-107 related to the activities of Preferred Podiatric Network, Inc.

In addition to negotiating price terms, MBH will also negotiate all non-price contract terms on behalf of network providers for all contracts entered into on behalf of the network. Any payor that is unable to reach agreement with MBH on non-price terms remains free to negotiate directly with any of the MBH network providers.

b. Management and Administrative Services Provided by MBH

All network providers will be required to participate in certain utilization review and quality assurance programs operated by MBH and will pay MBH a management fee in exchange for its services in that area. The same utilization review and quality standards will be applied by MBH to all network providers regardless of whether services provided are reimbursed on a fee-for-service or per diem basis. This is necessary to further the cost control and quality assurance goals of the network. The use of the same utilization management techniques under all network contracts should produce significant efficiencies under both the per diem fee and fee-for-service arrangements. MBH will involve significant clinical integration designed to produce efficiencies such as improved quality of care and decreased cost of care. This is as described in Guideline 8, Example #1 and #2 of the Statements of Antitrust Enforcement Policy in Health Care issued August 28, 1996. The fees paid to MBH will include the costs of developing the infrastructure necessary to monitor network providers in the area of quality and cost effective delivery of behavioral health care, including the cost of required information systems, data base development, and statistical analysis.

On request and unrelated to the services that are essential to the network relationship, MBH will provide additional marketing, administrative, billing, and contract management services to individual network providers. MBH will receive an additional management fee and a billing fee from network providers who elect this feature. In all cases the fees received by MBH will be reflective of the fair market value of the services rendered. By purchasing such services through MBH, network providers should be able to obtain access to more extensive quality assurance, utilization management, billing, and administrative services at a lower cost.

A list of all of the management and administrative services offered by MBH is found at Tab J.

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5. **The extent to which participants in the venture currently develop, produce, market or distribute products or services that will be developed, produced, marketed or distributed by the venture.**

There is not another behavioral health care network offering a full continuum of behavioral health care services anywhere in the Red River Valley Area; and the per diem product that is offered through MBH is not offered by any other provider in the area. There also is not another management services company in the area focused on providing information systems, utilization review, quality assurance, and contract management services to providers of behavioral health care services.

As to the fee-for-service option available through MBH, each of the network providers is currently providing and marketing their particular service under independent fee-for-service arrangements. The relationship between MBH and the network providers is non-exclusive and network providers will remain free to enter into individual contracts with payors after they become involved with MBH.

6. **The identity and competitive significance (described in terms of market shares, capacities, etc.) of all persons or firms that participate in the relevant product and geographic markets in which the venture will operate.**

- a. **Providers in the Fargo-Moorhead Area**

MBH has begun to serve the Fargo-Moorhead Area and will provide a wide variety of child, adolescent and adult behavioral services through participating psychiatrists, participating psychologists, and numerous other health care professionals including family therapists, case managers, and social workers. Generally, each of the network providers that will participate in MBH provides services that are complementary to each of the other providers. A list of the behavioral health care service providers in the Fargo-Moorhead Area and surrounding area is set forth below. Where available an estimate of the provider's total annual revenues is also included.

Psychology/Psychiatry Services

Annual Revenue

Dakota Clinic--This clinic system located in Fargo offers a complete range of acute and behavioral health care services. The staff includes over one hundred and fifty physicians, including 1 psychiatrist and 6 psychologists, none of whom specialize in children and adolescents.

Unknown

Southeast Human Service Center--This center is located in Fargo and has a staff of 2 psychiatrists, one of whom specializes in treating children and adolescents, and includes programs designed to meet the needs of children, adolescents and adults.

\$17 million

* Psychiatric Medicine Associates

\$1.4 million

Solo practitioners who specialize in children and adolescents--There is a psychiatrist located in Fargo who specializes in children and adolescents, two general psychiatrists in Moorhead that focus on services to children and adolescents, and one psychologist in Breckenridge who sees children and adolescents.

Unknown

Lakeland Mental Health Center--This center has a day treatment program in conjunction with the Moorhead, Minnesota public schools. The staff includes a psychiatrist who specializes in children and adolescents but who is not board certified in that area and residents in psychiatry rotating here from the University of North Dakota School of Medicine who see children and adolescents. There are also Lakeland Mental Health Centers in Detroit Lakes, Minnesota and Fergus Falls, Minnesota that have general psychiatrists who serve children and adolescents.

Unknown

Chemical Dependency Services

Drake & Burau--The staff of this group located in Fargo consists of 6 licensed addiction counselors. \$400,000

* Pathways \$200,000

Sharehouse Recovery Center--The staff of this center located in Fargo consists of 2 to 3 licensed addiction counselors. \$200,000

Foster and Respite Care

* PATH Unknown

Cass County Social Services--County services provided by social workers and case managers who arrange for foster and respite services. Unknown

Clay County Social Services-- County services provided by social workers and case managers who arrange for foster and respite services. Unknown

North Dakota Partnership Project--This agency provides foster and respite care using a foster family approach. Unknown

Inpatient and Outpatient Hospital Services

* Children's Psychiatric Hospital \$3 to 4 million

Dakota Heartland Health System--This is a hospital system located in Fargo offering primarily acute health care services. Unknown

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Meritcare Medical Center--This medical center located in Fargo has a well-established adult psychiatric department and the only existing adult inpatient and partial hospitalization program in the area. The staff includes 12 psychiatrists and 10 psychologists, including a psychologist and two psychiatrists that specialize in children and adolescents. The general psychiatrists treat older adolescents and the partial hospitalization program admits adolescents into its eating disorders program. \$3,900,000

VA Hospital--The staff of this hospital located in Fargo includes approximately six psychiatrists and the services include psychiatric and substance abuse services for adults. Unknown

Breckenridge Hospital/Hope Unit--This hospital provides inpatient psychiatric services and there is a general psychiatrist on staff at this hospital that works with children and adolescents. \$1,300,000

Jamestown State Hospital--This hospital provides inpatient psychiatric services and there are two board certified and one board eligible psychiatrists at this facility who specialize in the treatment of children and adolescents. Unknown

Fergus Falls Hospital--This regional treatment center located in Fergus Falls, Minnesota, provides psychiatric services for children, adolescents, and adults. Unknown

Residential Treatment Facilities

River's Edge--This facility located in Fargo has twelve beds and the staff includes social workers, psychiatric nurses, mental health counselors, case managers and psychiatrists. \$2 million

Luther Hall--This is a sixteen bed facility located in Fargo. \$2 million

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Dakota's Boys Ranch--This facility located in Fargo is owned and operated by River's Edge along with two other group home facilities.

Unknown

*MBH Network provider

b. Providers In The Grand Forks/East Grand Forks Area

Pending receipt of a favorable business review letter, MBH plans to add Grand Forks, East Grand Forks, and the surrounding communities to its network so that services are readily available to consumers throughout the entire Red River Valley Area. It is expected that Center for Psychiatric Care ("CPC"), a professional organization consisting of psychiatrists and an as yet to be developed adult psychiatric hospital (to be developed by CPC) would be asked to join the network to accomplish this goal. A list of the behavioral health care service providers in Grand Forks and East Grand Forks is set forth below along with an estimate of their total annual revenues, if available. In addition, there are other behavioral health care professionals available in smaller communities in the Red River Valley Area, including Wahpeton, Valley City, Jamestown, Devils Lake, Grafton, Carrington, Casselton, and Park River. Attached at Tab K is the North Dakota Medical Directory listing all licensed psychiatrists licensed as of April, 1996. This listing is organized by specialty area and by community and we have highlighted psychiatrists practicing in the Red River Valley Area.

Psychology/Psychiatry Services

Annual Revenue

- * Center for Psychiatric Care ("CPC")--The Center for Psychiatric Care is located in Grand Forks and provides general and adult psychiatric services. Its professional staff consists of 4 psychiatrists, 1 nurse practitioner, 2 licensed social workers, and 1 licensed psychologist.

\$1.4 million

Counseling Center--This center is located in Grand Forks.

Unknown

Family Institute--This agency is located in Grand Forks and the staff includes 11 doctorate level psychologists.

Unknown

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Grand Forks Clinic--The staff includes 10 doctorate level psychologists.

Unknown

Lipp, Carlson, Lommen & Associates--This clinic is located in Grand Forks and the staff includes 6 doctorate level psychologists.

Unknown

Lutheran Social Services--This agency located in Grand Forks offers children and adolescent services provided by social workers and psychologists.

Unknown

Northeast Human Service Center--This Center is located in Grand Forks and Grafton, North Dakota.

Unknown

Lake Region Health Service Center--This center is located in Devils Lake, North Dakota.

Unknown

Northwestern Mental Health Center--This center is located in East Grand Forks and Crookston, Minnesota.

Unknown

Solo Practitioners--There are two psychiatrists in the Grand Forks area who are in solo practice, one of whom specializes in children and adolescents.

Unknown

Village Family Services--This agency located in Grand Forks provides children and adolescent programs provided by social workers and psychologists.

Unknown

Northland Christian Counseling Center--No additional information available.

Unknown

Northwest Medical Center Mental Health Division--This center is located in Thief River Falls, Minnesota.

Unknown

Chemical Dependency Services

Don Foley Counseling--This provider is located in Grand Forks and includes outpatient treatment, a driving while under the influence program, and evaluation. Unknown

Grand Forks Schools--Services include prevention, intervention, and counseling for adolescents with alcoholic parents and support for post-treatment. Unknown

Kate Wright Counseling--This program is located in Grand Forks and includes low intensive individual therapy. Unknown

Northeast Human Service Center--This center is located in Grand Forks and Grafton, North Dakota, and includes low and high intensive outpatient for adults and adolescents. Unknown

Northridge Counseling--This program is located in Grand Forks and includes a driving while under the influence program and evaluation. Unknown

Operation Transition--This program is located in Grand Forks and includes halfway house services. Unknown

United Recovery Center--This center is located in Grand Forks and includes low and high intensive adult treatment and low intensive adolescent groups. Unknown

MBA Counseling--This is located in Grafton, North Dakota and includes evaluation, a driving while under the influence program, and outpatient treatment. Unknown

Foster and Respite Care

Grand Forks County Social Services--County services provided by social workers and case managers who arrange for foster and respite services. Unknown

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Inpatient and Outpatient Hospital Services

- * New psychiatric hospital yet to be opened

N/A

Altru--This is a comprehensive general acute regional hospital including mental health and chemical dependency services.

\$2 million

Residential Treatment Services

Ruth Myers--This residential program includes social workers, psychiatric nurses, mental health workers, case managers, and psychiatrists.

Unknown

*Proposed MBH Network provider

c. Competitive Significance

Aside from providing background information regarding all of the behavioral health care services providers in the Red River Valley Area, it is difficult to further quantify the "competitive significance" of each of these individual providers as compared to the services that will be provided through MBH due to the unique nature of the product it will offer and the difficulty inherent in identifying the geographic market for that unique product. Still, it is reasonable to conclude that the only individual product market in which MBH could obtain any kind of significant market share is psychiatric services.

There are sixteen psychiatrists in Fargo and Moorhead that will not be included in the network, five of whom specialize in child and adolescent psychiatry. This means MBH will include 16% of the total psychiatrists located in Fargo and Moorhead and 29% of the psychiatrists who specialize in child and adolescent. In the communities of Grand Forks and East Grand Forks, MBH will include four of seven, or 57% of the total psychiatrists in Grand Forks and East Grand Forks. However, these percentages are misleading because there are additional providers available in the communities surrounding the cities of Fargo, Moorhead, Grand Forks, and East Grand Forks that offer readily accessible alternatives to consumers in those areas. Also of note in analyzing the market share for psychiatric services is the availability of psychiatrists who are not board certified in children and adolescents who are able to, and do, treat children and adolescents. Finally, doctorate level psychologists offer a viable alternative to psychiatric services for consumers of any age.

These variables are similar to the factors presented in the request submitted by Allied Colon & Rectal Specialists Network (B.R.L. 96-319) in which the Department ruled that general surgeons presented a meaningful alternative for colon and rectal surgeons in determining the percentage of market share. Thus these percentages for psychiatric services reflect the highest possible market share. Even if these levels were reflective of MBH's actual market share for psychiatric services, rates much higher have been viewed as not having an anticompetitive effect where a network is nonexclusive and specialty skills are involved. See B.R.L. re: Yellowstone Physicians LLC (involving participation of 65% of general surgeons and 53% of obstetricians/gynecologists).

Finally, it is important to note that regardless of the definition utilized for the product or geographic markets, PMA, which employs the four participating psychiatrists in the Fargo-Moorhead Area, and CPC, which MBH plans to add to the network, obtain no increase in market share for psychiatric services as a result of their involvement with MBH. They simply gain the competitive benefit of being a part of a continuum of complementary behavioral health care services.

d. Summary

In summary, there are a number of other very large providers in both the Fargo-Moorhead Area and the Grand Forks and East Grand Forks communities that offer services that exceed the scope of services that will be offered through MBH, including Meritcare Medical Center, Dakota Heartland Health System, Lakeland Mental Health Center, Northwestern Mental Health Center, Family Institute, Altru, and Southeast Human Service Center. All of these providers, plus all of the MBH participating providers, are readily available to consumers and would be available to participate in any network that might attempt to form in the Red River Valley Area. Although there is not currently another behavioral health care services network in the market, it is nonetheless a very competitive market and a network could readily be formed at any time in the future.

7. Any restrictions on the ability of participants in the venture to compete with the venture, individually or through other entities.

Network providers are free to accept or reject agreements negotiated by MBH with payors and may enter into individual contracts with payors and join other networks at any time. The only limitation imposed on network providers is that if a provider accepts the terms of an agreement with a payor through MBH, and the provider enters into a separate agreement with that same payor, the provider may not serve a patient under the separate agreement that could be served under the MBH agreement.

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As this request reveals, MBH includes a relatively small percentage of providers in each specialty practice area on a non-exclusive basis. Given these facts, it is highly unlikely that MBH's operations could result in any adverse impact on competition.

8. Any restrictions on the flow of information from the venture to its owners.

MBH will utilize an employee who is not a health care provider to handle all pricing information. Fee or pricing information provided to this employee by network providers will not be shared with the provider-owners of MBH or with other network providers. MBH will not share any prospective or disaggregated current or historical price information with network participants. The designated employee will be solely responsible for creating a data base, preparing an analysis, and making recommendations to MBH network providers regarding the MBH global fee arrangement. The fee schedule developed and used by MBH when dealing with fee-for-service arrangements will reflect the percentage of participants in the network who have authorized contracts at various price levels. The standard Participating Provider Agreement reflects that fee information is proprietary and confidential, and that no member shall have access to any information held by an agent of MBH other than on an historical and aggregate basis.

9. The ten largest customers (actual or projected) for any products or services that will be offered by the venture in the relevant geographic market and an estimate of their annual purchases.

It is very difficult to predict which payors or entities will contract with MBH. Based upon financial projections and the business plan developed for MBH, the following is a list of potential customers and the level of business MBH anticipates with each customer by the beginning of 1998;

- (1) North Dakota Blue Cross/Blue Shield
\$4 million to \$4.5 million
Approximately 40% of total MBH business
- (2) North Dakota Medicaid
\$1.5 million to \$1.8 million
Approximately 15% of total MBH business
- (3) Medicare
\$1.5 million to \$1.8 million
Approximately 15% of total MBH business

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- (4) Blue Cross Blue Shield of Minnesota
\$1 million to \$1.2 million
Approximately 10% of total MBH business
- (5) Minnesota Medical Assistance
\$300,000 to \$450,000
Less than 5% of total MBH business
- (6) Medica/Allina/UBS
\$300,000 to \$450,000
Less than 5% of total MBH business
- (7) Value Behavioral Health
\$300,000 to \$450,000
Less than 5% of total MBH business
- (8) Preferred One
\$300,000 to \$450,000
Less than 5% of total MBH business
- (9) Meritcare
\$300,000 to \$450,000
Less than 5% of total MBH business
- (10) Dakota Heartland Health System
\$300,000 to \$450,000
Less than 5% of total MBH business

10. The requirements for entry into the relevant product or geographic market in which the venture will operate, together with the identity of other persons or firms believed to be positioned to enter within one to two years.

There are no known barriers to the development of a competing network. The relationship with MBH network providers is non-exclusive, and there are numerous other providers available to participate in newly forming networks. As a result, another network could readily recruit a full complement of behavioral health care service providers. MBH is not aware of any other persons or firms planning to enter this new product market in the next one or two years, but it is possible that one or more of the large health care centers or a managed care plans that serve the area, including Meritcare, Lakeland Mental Health, Dakota Center, Altru or Northern Plains HMO, could do so in the near future.

11. Any business synergies, efficiencies or other benefits likely to flow from the venture.

MBH believes that it will create a number of business efficiencies and other benefits including the following:

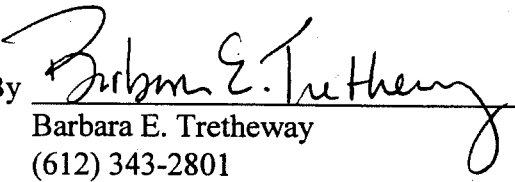
- (1) For the first time, consumers will have access to a continuum of behavioral health care services focused on access to an appropriate level of care at a cost-efficient price.
- (2) Payors will have the opportunity to offer enrollees a full package of coordinated behavioral health care rather than only individual noncoordinated services, resulting in a greater likelihood that appropriate levels and types of care will be provided to enrollees and lower cost to payors and consumers.
- (3) Payors will be provided with reports on the cost and quantity of service provided and on the network's success in meeting its goals, permitting the payors to focus on providing the highest quality and most cost-effective care.
- (4) MBH will provide feedback, data, and information to network providers that will permit providers to increase their quality, efficiency, and cost-effectiveness and MBH to meet its access, quality, and cost-effectiveness goals.
- (5) MBH will result in increased accountability among network providers for the quality and cost-effectiveness of all facets of behavioral health care, rather than having only an individual provider focus.
- (6) MBH will review the credentials and performance of all members, thereby reducing the need for payors to conduct this activity.
- (7) MBH will provide contract management services previously provided separately by each of the network provider entities, thus reducing the infrastructure needed by individual provider entities.


Assistant Attorney General
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Please do not hesitate to contact us if you have questions concerning the information contained in this letter or the documents enclosed with this letter. Where possible, MBH will implement any suggested modifications which address any potential concerns of the Department.

Very truly yours,

GRAY, PLANT, MOOTY,
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